IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1506 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLABEN R DHANAWADE

Versus

VIRPUR GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 1506 of 1989

MS. SANGITA PAHWA for THAKKAR ASSOCIATES for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the action of the respondent No.1 in seeking to deduct Rs. 300 per month from the salary of the petitioner towards the alleged excess payment made to her. The petitioner has also prayed for being granted appropriate pay in the pay-scale of Rs. 950-1500 pursuant to the

acceptance of the recommendations of the Fourth Pay Commission as adopted by the State Government.

2. It is the case of the petitioner that at the relevant time she was working as Auxiliary Nurse cum Mid-wife with respondent No.1 Panchayat. It is the case of the petitioner that on 1.4.1986, by Resolution No.17, the respondent No.1 decided to grant the benefit of revised pay-scale to the petitioner as per the report of Desai & Sarela Panch Commission. It was also resolved that the arrears be paid to the petitioner in three equal instalments. It is the case of the petitioner that the petitioner received part of the amount of arrears payable to her pursuant to the said Resolution and she also started getting the revised pay in the scale of Rs. 950-1500 from May, 1986. The petitioner has stated that suddenly by the impugned order dated 13.12.1988, respondent No.1 decided to recover the extra payment made to her from her monthly salary at the rate of Rs. 300/- every month.

3. The petitioner has challenged the said action of the respondent No.1 submitting that the State Government has decided to apply the recommendation of the Fourth Pay Commission and the Panchayat employees are also entitled to receive the revised pay-scale. It is pointed out that similarly situated staff of the Panchayat employees such as Auxiliary Nurse & Midwife have now been placed in the pay-scale of Rs. 950-1500. It is also stated that only the petitioner is singled out for the discriminatory treatment.

4. Though served, respondent No.1 is not represented by anybody. Earlier learned Advocate Mr. R.A. Mishra had appeared for the respondent No.1, however, Mr. Mishra has stated before this Court on 16.2.2004 that he has already withdrawn his appearance in the matter. Accordingly, I have no choice but to decide the petition on the basis of the averments made in the petition (since no affidavit in reply is filed by the respondents) and on the basis of the contentions raised by the learned Advocate for the petitioner.

5. From the averments of the petition it is clear that for the post of Auxiliary Nurse-cum-Mid-wife, the Fourth Pay Commission recommended granting of pay-scale of Rs. 950-1500 and this was also to be applied to the Panchayat employees. Accordingly, I find that the petitioner was required to be placed in the pay-scale of Rs. 950-1500 with effect from 1.4.1986. The action of the respondent No.1 however to discontinue the higher

pay-scale fixation in favour of the petitioner cannot be faulted with, since the petitioner has not been able to point out any authorisation in support of the same. In the result, I conclude that though the respondent No.1 was not wrong in withdrawing the benefits of the higher pay granted to the petitioner by Resolution dated 1.4.1986, the in action on the part of the respondent No.1 in not placing the petitioner in the pay-scale of Rs. 950-1500 from 1.4.1986 cannot be countenanced. In the result, the respondent No.1 is directed to refix the pay of the petitioner in view of the directions hereinabove and pay her the difference in salary, if she is found entitled to the same. Until the said exercise is carried out, the interim directions preventing the respondent No.1 from recovering the alleged excess payment shall continue. In the result, the petition succeeds in part. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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